IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3041 OF 2006

Yashwant Pandu Pawar. .. Petitioner.

vs.

Govt. of Maharashtra

& Ors. .. Respondents.

Mr. M.M. Sathaye for petitioner.

Mr. S.K. Chinchalikar, AGP.,

for Respondent Nos. 1 to 5.

CORAM : A.P. DESHPANDE, J.

DATE : 6th November, 2006.

P.C.

. Rule. Rule returnable forthwith. Taken up for final hearing by consent of the parties.

2. The petitioner is a tribal belonging to Adivashi Bhilla community who claims to be in possession of the agricultural land belonging to the respondents since the year 1959. The petitioner seems to be using the said land for cultivation. As the petitioner apprehended interference in his peaceful possession at the hands of the authorities and State, he instituted a civil suit before the

Civil Judge, Senior Division, Nashik claiming a declaration that the petitioner/ plaintiff has become the owner of the suit land by adverse possession. In addition to the declaration, the petitioner also prayed for permanent injunction seeking to restrain the respondents from interfering with the petitioner's possession over the suit land which is admeasuring 80 Ars. After the trial, the suit came to be dismissed and aggrieved by the judgment and decree passed by the trial Court dismissing the suit, the present petitioner preferred a Regular Civil Appeal bearing No. 172 of 2004. In the pending appeal, the petitioner/plaintiff moved an application seeking amendment of the plaint with a view to claim an alternative relief of regularisation of the encroachment.

3. According to the learned counsel for the petitioner, it is categorically stated in para 6 of the plaint that adjoining encroachers on the similarly situated government land have been regularised sometime in the year 1979 and the petitioner though similarly situated has not been granted regularisation of the encroachment. Besides placing reliance on para 6 of the plaint, the petitioner also relied upon the Government Resolution dated 14.8.2001 which permits regularisation of encroachment over the government

land subject to fulfilling conditions contained in the Govt. Resolutions issued prior in point of time and which are referred to in the G.R. dated 14.8.2001. No doubt, the Government Resolution makes a reference in regard to regularisation of the encroachment of government barren land (pad/gairan) but, then, that relates to the merits of the matter. The First Appellate court rejected the amendment application by holding that the power for regularisation of the land is required to be exercised by the officers of the Revenue Department and if the proposed amendment is allowed, the same would result in encroaching upon the powers of the revenue officers. The reasons spelt out in the impugned order are far from satisfactory. The petitioner had as a matter of fact pleaded the case for regularisation of encroachment in para 6 of the plaint itself. However, no specific prayer in regard to regularisation was made, which, if permitted does not change the nature of the suit. The learned counsel for the petitioner submits that the petitioner is a tribal agriculturist who is in possession of a small piece of land admeasuring 80 Ars. If, in case, in the submission of the learned counsel, the amendment prayed for is not granted, the same is bound to result in miscarriage of justice. This is crystal clear that if the prayer for proposed amendment is not granted, the same is likely to result in miscarriage of justice inasmuch

as according to the petitioner identically situated other encroachers have been granted regularisation whereas the petitioner has been denied. In all fairness, the learned counsel for the petitioner submits that the petitioner would not lead any evidence and what is being asked for is only permission to amend the prayer clause with a view to seek regularisation. The learned counsel for the petitioner further submits that he shall place on record of the First Appellate Court public documents with a view to substantiate the amended prayer.

4. The learned AGP has supported the impugned order.

5. For the reasons recorded hereinabove, in the interest of justice, writ petition is allowed. The impugned order passed by the First Appellate Court below Exhibit-8 in Civil Appeal No. 172 of 2004 dated 4.2.2006 is quashed and set aside. The application moved by the petitioner under Order 6, Rule 17 Exhibit-8 is allowed. In view of allowing of the application filed by the petitioner/ appellant, liberty to the respondents to carry out consequential amendments in the written statement.

6. Rule made absolute in above terms with no order as to costs.

(A.P. Deshpande, J.)